



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2939

by Rep. Peter Breen

SYNOPSIS AS INTRODUCED:

New Act

Creates the Campus Free Speech Act. Requires the governing board of each public university and community college to develop and adopt a policy on free expression; sets forth what the policy must contain. Requires the Board of Higher Education to create a Committee on Free Expression to issue an annual report. Requires public institutions of higher education to include in their freshman orientation programs a section describing to all students the policies and rules regarding free expression that are consistent with the Act. Contains provisions concerning rules, construction of the Act, permitted restrictions, and enforcement.

LRB100 10436 NHT 20646 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Campus
5 Free Speech Act.

6 Section 5. Legislative findings. The General Assembly
7 finds the following:

8 (1) Section 4 of Article I of the Illinois Constitution
9 recognizes that "all persons may speak, write and publish
10 freely, being responsible for the abuse of that liberty. In
11 trials for libel, both civil and criminal, the truth, when
12 published with good motives and for justifiable ends, shall
13 be a sufficient defense".

14 (2) Public institutions of higher education have
15 historically embraced a commitment to freedom of
16 expression in policy.

17 (3) In recent years, public institutions of higher
18 education have abdicated their responsibility to uphold
19 free-speech principles, and these failures make it
20 appropriate for all public institutions of higher
21 education to restate and confirm their commitment in this
22 regard.

23 (4) In 1974, the Committee on Free Expression at Yale

1 University issued a statement known as the Woodward Report
2 that stands as a classic defense of free expression on
3 campuses; in 2015, the Committee on Freedom of Expression
4 at the University of Chicago issued a similar and widely
5 respected report; and in 1967, the Kalven Committee Report
6 of the University of Chicago articulated the principle of
7 institutional neutrality regarding political and social
8 issues and the essential role of such neutrality in
9 protecting freedom of thought and expression at
10 universities. The principles affirmed by these 3 highly
11 regarded reports are inspiring articulations of the
12 critical importance of free expression in higher
13 education.

14 (5) The General Assembly views freedom of expression as
15 being of critical importance and requires that each public
16 institution of higher education ensure free, robust, and
17 uninhibited debate and deliberation by students of public
18 institutions whether on or off campus.

19 (6) The General Assembly has determined that it is a
20 matter of statewide concern that all public institutions of
21 higher education officially recognize freedom of speech as
22 a fundamental right.

23 Section 10. Definition. In this Act, "public institution"
24 means a public university or public community college in this
25 State.

1 Section 15. Policy on free expression required. The board
2 of trustees of a public institution shall develop and adopt a
3 policy on free expression that contains, at least, the
4 following:

5 (1) A statement that the primary function of an
6 institution of higher education is the discovery,
7 improvement, transmission, and dissemination of knowledge
8 by means of research, teaching, discussion, and debate.
9 This statement shall provide that, to fulfill this
10 function, the institution must strive to ensure the fullest
11 degree of intellectual freedom and free expression.

12 (2) A statement that it is not the proper role of the
13 institution to shield individuals from speech protected by
14 the First Amendment, including, without limitation, ideas
15 and opinions they find unwelcome, disagreeable, or even
16 deeply offensive.

17 (3) A statement that students and faculty have the
18 freedom to discuss any problem that presents itself, as the
19 First Amendment permits and within the limits of reasonable
20 viewpoint and content-neutral restrictions on time, place,
21 and manner of expression that are consistent with this Act
22 and that are necessary to achieve a significant
23 institutional interest; provided that these restrictions
24 are clear, published, and provide ample alternative means
25 of expression. Students and faculty shall be permitted to

1 assemble and engage in spontaneous expressive activity as
2 long as the activity is not unlawful and does not
3 materially and substantially disrupt the functioning of
4 the institution, subject to the requirements of this Act.

5 (4) A statement that any person lawfully present on
6 campus may protest or demonstrate there. The statement
7 shall make clear that protests and demonstrations that
8 infringe upon the rights of others to engage in or listen
9 to expressive activity shall not be permitted and shall be
10 subject to sanction. This does not prohibit professors or
11 other instructors from maintaining order in the classroom.

12 (5) A statement that the campuses of the institution
13 are open to any speaker whom students, student groups, or
14 members of the faculty have invited.

15 (6) A statement that the public areas of campuses of
16 the institution are traditional public forums, open on the
17 same terms to any speaker.

18 (7) A range of disciplinary sanctions for anyone under
19 the jurisdiction of the institution who interferes with the
20 free expression of others.

21 (8) A provision that, in all disciplinary cases
22 involving expressive conduct, students are entitled to a
23 disciplinary hearing under published procedures,
24 including, at minimum:

25 (A) the right to receive advanced written notice of
26 the charges;

1 (B) the right to review the evidence in support of
2 the charges;

3 (C) the right to confront witnesses against them;

4 (D) the right to present a defense;

5 (E) the right to call witnesses;

6 (F) a decision by an impartial arbiter or panel;

7 and

8 (G) the right of appeal.

9 When suspension for longer than 30 days or expulsion
10 are potential penalties, students are entitled to a
11 disciplinary hearing under published procedures,
12 including, at minimum, all of the procedures listed in this
13 subdivision (8), plus the right to active assistance of
14 counsel.

15 (9) A provision that any student who has twice been
16 found responsible for infringing on the expressive rights
17 of others will be suspended for a minimum of one year or
18 expelled.

19 (10) A statement that the institution (i) shall strive
20 to remain neutral, as an institution, on the public policy
21 controversies of the day and (ii) may not take action, as
22 an institution, on the public policy controversies of the
23 day in such a way as to require students or faculty to
24 publicly express a given view of social policy.

25 (11) A statement that this policy supersedes and
26 nullifies any prior provisions in the policies and

1 regulations of the institution that restrict speech on
2 campus and are, therefore, inconsistent with this policy on
3 free expression. The institution shall remove or revise any
4 such provisions in its policies and regulations to ensure
5 compatibility with this policy on free expression.

6 Section 20. Committee on Free Expression.

7 (a) The Board of Higher Education shall create a single
8 Committee on Free Expression consisting of all of the following
9 members, all of whom shall serve without compensation but shall
10 be reimbursed for their reasonable and necessary expenses from
11 funds appropriated for that purpose:

12 (1) One member representing the University of Illinois
13 at Urbana-Champaign, appointed by the university's board
14 of trustees.

15 (2) One member representing the University of Illinois
16 at Springfield, appointed by the university's board of
17 trustees.

18 (3) One member representing the University of Illinois
19 at Chicago, appointed by the university's board of
20 trustees.

21 (4) One member representing Southern Illinois
22 University at Carbondale, appointed by the university's
23 board of trustees.

24 (5) One member representing Southern Illinois
25 University at Edwardsville, appointed by the university's

1 board of trustees.

2 (6) One member representing Western Illinois
3 University, appointed by the university's board of
4 trustees.

5 (7) One member representing Eastern Illinois
6 University, appointed by the university's board of
7 trustees.

8 (8) One member representing Illinois State University,
9 appointed by the university's board of trustees.

10 (9) One member representing Northern Illinois
11 University, appointed by the university's board of
12 trustees.

13 (10) One member representing Chicago State University,
14 appointed by the university's board of trustees.

15 (11) One member representing Governors State
16 University, appointed by the university's board of
17 trustees.

18 (12) One member representing Northeastern Illinois
19 University, appointed by the university's board of
20 trustees.

21 (13) Three members representing public community
22 colleges, appointed by the Illinois Community College
23 Board at its discretion.

24 (b) The Committee on Free Expression shall meet initially
25 at the call of the Chairperson of the Board of Higher
26 Education, shall select one member as chairperson at its

1 initial meeting, and shall thereafter meet at the call of that
2 chairperson. The Board of Higher Education shall provide
3 administrative and other support to the Committee.

4 (c) The Committee on Free Expression shall report to the
5 public, the Board of Higher Education, the Governor, and the
6 General Assembly on September 1 of every year. The report shall
7 include all of the following:

8 (1) A description of any barriers to or disruptions of
9 free expression within public institutions.

10 (2) A description of the administrative handling and
11 discipline relating to these disruptions or barriers.

12 (3) A description of substantial difficulties,
13 controversies, or successes in maintaining a posture of
14 administrative and institutional neutrality with regard to
15 political or social issues.

16 (4) Any assessments, criticisms, commendations, or
17 recommendations the committee sees fit to include.

18 Section 25. Freshman orientation information. Public
19 institutions shall include in their freshman orientation
20 programs a section describing to all students the policies and
21 rules regarding free expression that are consistent with this
22 Act.

23 Section 30. Rules; construction of Act; permitted
24 restrictions. The Board of Higher Education is authorized to

1 adopt rules to further the purposes of the policies adopted
2 pursuant to this Act. Nothing in this Act shall be construed to
3 prevent public institutions from regulating student speech or
4 activity that is prohibited by law. Except as further limited
5 by this Act, public institutions shall be allowed to restrict
6 student expression only for expressive activity not protected
7 by the First Amendment, including all of the following:

8 (1) Violations of State or federal law.

9 (2) Expression that a court has deemed unprotected
10 defamation.

11 (3) Harassment as follows:

12 (A) Peer-on-peer harassment, which is defined as
13 conduct directed by a student toward another
14 individual student, on the basis of that student's
15 membership or perceived membership in a protected
16 class, that is so severe, pervasive, and objectively
17 offensive that it effectively deprives the victim of
18 access to the educational opportunities or benefits
19 provided by the public institution.

20 (B) Quid pro quo sexual harassment, which is
21 defined as explicitly or implicitly conditioning a
22 student's participation in an education program or
23 activity or basing an educational decision on the
24 student's submission to unwelcome sexual advances,
25 requests for sexual favors, or other verbal,
26 nonverbal, or physical conduct of a sexual nature.

1 (4) True threats, which are defined as statements meant
2 by the speaker to communicate a serious expression of an
3 intent to commit an act of unlawful violence to a
4 particular individual or group of individuals.

5 (5) An unjustifiable invasion of privacy or
6 confidentiality not involving a matter of public concern.

7 (6) An action that unlawfully disrupts the function of
8 the public institution.

9 (7) Reasonable time, place, and manner restrictions on
10 expressive activities consistent with subdivision (3) of
11 Section 15 of this Act.

12 Section 35. Restriction on expressive conduct;
13 enforcement.

14 (a) A public institution may restrict expressive conduct in
15 the public areas of campus only if it demonstrates that the
16 restriction:

17 (1) is necessary to achieve a compelling governmental
18 interest;

19 (2) is the least restrictive means of furthering that
20 compelling governmental interest;

21 (3) leaves open ample other opportunities to engage in
22 the expressive conduct; and

23 (4) provides for spontaneous assembly and the
24 distribution of literature.

25 (b) The following persons may bring an action in a court of

1 competent jurisdiction to enjoin any violation of this Section
2 or to recover reasonable court costs and reasonable attorney
3 fees:

4 (1) The Attorney General.

5 (2) A person whose expressive rights are violated by a
6 violation of this Section.

7 (c) In an action brought under subsection (b) of this
8 Section, if the court finds that a violation of this Section
9 occurred, the court shall award the aggrieved person injunctive
10 relief for the violation and shall award reasonable court costs
11 and reasonable attorney fees. The court shall also award
12 damages of \$1,000 or actual damages, whichever is higher.

13 (d) A person shall bring an action for a violation of this
14 Section within one year after the date the cause of action
15 accrues. For the purpose of calculating the one-year limitation
16 period, each day that the violation persists or each day that a
17 policy in violation of this Section remains in effect
18 constitutes a new violation of this Section and shall be
19 considered a day that the cause of action has accrued.